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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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July 29, 2019

Mark Bialek
Office of Inspector General
Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Mr. Bialek:

We write to you to request that you open an investigation into the decision by the Acting Director of the Consumer Financial Protection Bureau (CFPB), Mick Mulvaney, and current Director, Kathleen Kraninger, to dismantle the CFPB's Office of Fair Lending and Equal Opportunity and strip it of its supervisory and enforcement powers and the implementation of that Directive by CFPB political appointees, including former Policy Associate Director for Supervision, Enforcement and Fair Lending Eric Blankenstein.

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank), Congress mandated that the CFPB Director establish an "Office of Fair Lending and Equal Opportunity" (OFLEO or Office) within the CFPB.¹ Dodd Frank expressly charged OFLEO with "providing *oversight and enforcement* of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act."² Congress also required OFLEO to submit an annual report to Congress detailing the CFPB's efforts to "fulfill its fair lending mandate."³

Congress required the CFPB Director to create this separate fair lending office in response to predatory lending practices that targeted racial and ethnic minorities and traditionally

¹ Dodd-Frank § 1013(c)(1).

² *Id.* § 1013(c)(2)(A) (emphasis added).

³ *Id.* § 1013(c)(2)(D).

underserved communities, fueled the foreclosure crisis, and exacerbated income inequality across racial and ethnic lines.⁴

In fulfillment of Dodd Frank’s statutory mandate, in 2011 Director Cordray established OFLEO as a separate office within the CFPB to supervise and enforce fair lending laws. OFLEO was organized, along with the Office of Supervision and Office of Enforcement, as part of the Division of Supervision, Enforcement, and Fair Lending (SEFL).⁵ From 2011 through 2017 OFLEO carried out its statutory mandate to enforce fair lending laws by:

- Bringing numerous public enforcement actions that secured more than \$400 million in relief for victims of discrimination;
- Referring cases involving a pattern or practice of discrimination to the Department of Justice;
- Helping design specialized oversight and training and supporting CFPB examiners to ensure that banks and non-banks were complying with anti-discrimination laws; and
- Working with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education.⁶

OFLEO’s record makes clear that it played an important role in fighting discrimination—from 2011 through 2017—just as Congress intended.

Mr. Mulvaney became Acting Director of the CFPB in November 2017. In December 2017, Mr. Mulvaney hired Eric Blankenstein as a political appointee to head the CFPB’s SEFL Division, which included OFLEO. Mr. Mulvaney also hired a number of other political appointees who would take control from career staff at the top divisions of the agency.⁷

In February 2018, Acting Director Mick Mulvaney announced his intention to reorganize OFLEO and strip it of its supervisory and enforcement powers. OFLEO would be moved to under the control of the Director’s Office.⁸ In an email to staff, Mr. Mulvaney stated that OFLEO would focus only on “advocacy, coordination, and education” and would no longer engage in any supervision or enforcement functions.⁹ Mr. Blankenstein, whom Mr. Mulvaney hired in December 2017, would have participated in the decision to reorganize OFLEO and strip it of its

⁴ See, e.g., <https://www.reuters.com/article/us-usa-foreclosures-race/racial-predatory-loans-fueled-u-s-housing-crisis-study-idUSTRE6930K520101004> and <https://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>.

⁵ See CFPB, Semi-Annual Report of the Consumer Financial Protection Bureau (Jan. 30, 2012), at 6, available at https://files.consumerfinance.gov/f/2012/01/Congressional_Report_Jan2012.pdf.

⁶ See generally CFPB, Fair Lending Report of the Consumer Financial Protection Bureau (2012 – 2017).

⁷ See <https://www.americanbanker.com/news/meet-mick-mulvaney-politicos-six-senior-staff-remaking-the-cfpb>.

⁸ <https://theintercept.com/2018/02/01/cfpb-mick-mulvaney-lending-housing-discrimination/>.

⁹ <https://www.americanbanker.com/news/cfpbs-mulvaney-strips-his-fair-lending-office-of-enforcement-powers>.

supervisory and enforcement powers. Following Mr. Mulvaney's announcement, Mr. Blankenstein was tasked with implementing the reorganization.

Kathleen Kraninger became CFPB Director on December 10, 2018. She retained political appointees, including Eric Blankenstein and the other political appointees that Mr. Mulvaney had hired. By 2019, the dismantling of OFLEO was complete, with remaining OFLEO enforcement attorneys and managers reassigned to other positions at the CFPB.

Following the reorganization, OFLEO is constituted in violation of the express statutory language of Dodd Frank. Section 1013 of Dodd Frank directs the CFPB Director to establish OFLEO and that it would have supervisory and enforcement authority over fair lending laws.¹⁰ The entire point of Congress mandating OFLEO and vesting it with this authority was to ensure that the CFPB devoted specific resources and support to discrimination and fair lending cases. Mr. Mulvaney and Ms. Kraninger are thwarting Congress' will, as expressed in Dodd-Frank, by splitting OFLEO and stripping it of its enforcement and supervisory powers.

In his April 11, 2018 testimony to Congress, Mr. Mulvaney explained that his decision to reorganize OFLEO would not impact fair lending enforcement.¹¹ But the record belies his statement. Since Director Cordray's departure in 2017, the CFPB has not brought a single fair lending public enforcement action or referred any fair lending cases to the Department of Justice.¹² John Czwartacki, a political appointee and senior adviser to Mulvaney, has explained that the change was because it was duplicative for the CFPB to have a separate supervision and enforcement function for fair lending.¹³ Congress made that decision, however, when it mandated a separate OFLEO with its own supervision and enforcement functions.

Mr. Mulvaney's and Ms. Kraninger's decision to have Eric Blankenstein *lead* the reorganizing of OFLEO raises further doubt about their stated reasons for the reorganization. Mr. Blankenstein was a political appointee hired by Mr. Mulvaney to lead the SEFL Division, which included OFLEO. As was widely reported in the media, Mr. Blankenstein authored racist and sexist blog posts that, among other things, questioned whether the "n-word" was inherently racist and claimed that the majority of hate crimes were hoaxes.¹⁴ Moreover, as recently as 2016, Mr. Blankenstein argued that claims that President Obama's birth certificate was illegitimate were not rooted in prejudice.¹⁵ When confronted with his statements, Mr. Blankenstein refused to express any contrition or distance himself from these views. Instead, displaying a shocking lack

¹⁰ See *supra* n. 1.

¹¹ See <https://www.wsj.com/articles/mulvaney-to-tell-lawmakers-cfpb-will-keep-policing-lending-discrimination-rules-1523399093?ns=prod/accounts-wsj>.

¹² See https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_fall-2018.pdf.

¹³ See *supra* n. 9.

¹⁴ Blankenstein blog posts available at <http://twoguyschatting.blogspot.com/2004/09/hate-crimes-vs-crimes.html>; see also https://www.washingtonpost.com/investigations/trump-anti-discrimination-official-once-called-most-hate-crimes-hoaxes/2018/09/26/05438bbe-c0fe-11e8-92f2-ac26fda68341_story.html?utm_term=.37b7b4104163.

¹⁵ <https://www.nytimes.com/2018/10/03/us/politics/consumer-bureau-blankenstein-racial-comments.html>.

of self-awareness, Mr. Blankenstein stated that his prior writings provide no insight into how he performed his job leading the CFPB's fair lending enforcement efforts. In fact, according to the IG's report, Mr. Blankenstein's subordinates had noted that his beliefs may have affected his decisions on the job.

The CFPB Inspector General's (IG) May 7, 2019 report on its investigation of Mr. Blankenstein raises additional, serious concerns about whether the dismantling of the OFLEO was the result of a racial animus and an improper political agenda. The report found a troubling set of facts and reached a disturbing set of conclusions about Mr. Blankenstein's actions as a Policy Associate Director.¹⁶ It found that he asked a subordinate at CFPB, while she was on leave, to provide a public statement of support amid the controversy of his racist statements. According to the IG report, the subordinate felt coerced to comply with the request in order to save OFLEO from the reorganization efforts led by Mr. Blankenstein and other political appointees.¹⁷ The report concludes that Mr. Blankenstein "may have abused his authority," "may have misused his position for private gain," and "created the appearance of a violation of the Standards of Ethical Conduct for Employees of the Executive Branch."¹⁸

The IG's report also contains disturbing revelations about Mr. Mulvaney's reaction to the disclosure of Mr. Blankenstein's racist and sexist statements. Rather than condemn, or at least distance himself, from Mr. Blankenstein's statements, Mr. Mulvaney saw them as cause for celebration. According to the IG report, "Blankenstein described his encounter... as Mulvaney giving 'him a high-five that morning in, sort of, celebration of the article that had come out the night before.'"

The IG issued its report on May 7, 2019. Despite having access to the disturbing findings and conclusions of the IG's report, Ms. Kraninger allowed Mr. Blankenstein to resign from the CFPB rather than terminating his employment. Even more troubling is the fact that for months after his racist writings were published in the media, Ms. Kraninger allowed Mr. Blankenstein to continue in his job and lead the dismantling of the Office of Fair Lending and Equal Opportunity.

As discussed above, the following facts are not in dispute:

- Dodd Frank requires that the CFPB Director establish OFLEO;
- Dodd Frank requires that OFLEO have supervisory and enforcement authority over fair lending laws;
- Mr. Mulvaney and Ms. Kraninger reorganized OFLEO and stripped it of its supervisory and enforcement authority despite this express statutory mandate;

¹⁶ Report of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, May 7, 2019. On file with the Minority Staff of the United States Committee on Banking, Housing, and Urban Affairs.

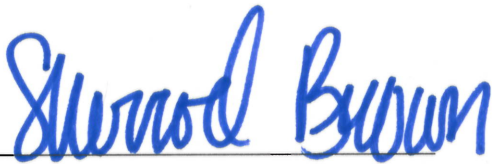
¹⁷ *Id.*

¹⁸ *Id.*

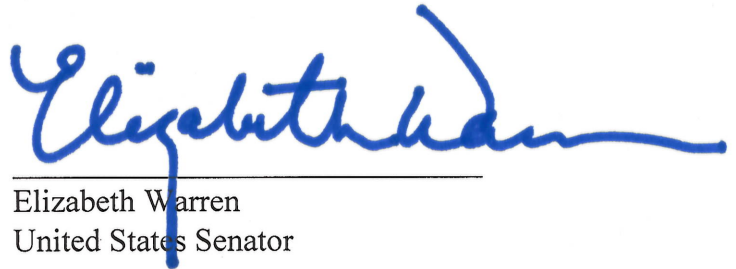
- Eric Blankenstein, a political appointee with a history of racist and sexist statements, was put in charge of the SEFL Division and led the reorganization of OFLEO;
- Mr. Mulvaney and Ms. Kraninger allowed Mr. Blankenstein to remain in his position even after media disclosure of his racist and sexist statements;
- Under both Mr. Mulvaney and Ms. Kraninger, the CFPB has not brought a single fair lending enforcement action or referred a single fair lending case to the Department of Justice.

Based on these undisputed facts, we ask that you immediately open an investigation into the dismantling of OFLEO and its supervisory and enforcement functions. There are too many unanswered questions: Why did Mulvaney and Kraninger disregard the express statutory language of Dodd-Frank? Why did they hire Eric Blankenstein and put him in charge of the dismantling of OFLEO? Why did Kraninger keep Mr. Blankenstein in charge even after his racist and sexist statements became public? And were any of these decision made based on racial animus or an improper political agenda? Please let us know by August 5, 2019 whether you have opened an investigation. We also request regular updates on the status of the investigation.

Sincerely,



Sherrod Brown
United States Senator



Elizabeth Warren
United States Senator